



# AFFIDAVIT OF INVENTOR CHARLES REYNOLDS

UNDER 37 C.F.R. § 1.131

Appl. No. : 10/625,837  
Applicant : Charles H. Reynolds  
Filed : July 22, 2003  
TC/A.U. : 2836  
Examiner : Hal Ira Kaplan

Confirmation No. 8987

Docket No. : 512-001620US  
Customer No. : 22798

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Charles H. Reynolds, am a named inventor on U.S. Patent Application Serial No. 10/625,837, filed in the USPTO on July 22, 2003, and which is a continuation-in-part of U.S. patent application 10/431,333 filed May 6, 2003 which claims priority from provisional patent application 60/378,342, filed May 6, 2002.

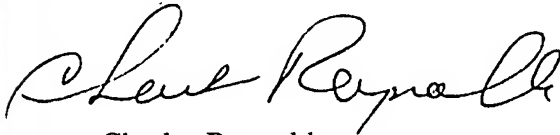
I understand that the Examiner has rejected all pending claims under 35 U.S.C. § 102(e) for alleged anticipation by U.S. Patent 7,043,543 to Ewing et al., filed on August 15, 2001.

Furthermore, I and the other named inventor fully conceived the claimed invention (*i.e.*, an intelligent power management strip with individual current monitoring on multiple outlets) in the United States of America prior to the filing of 7,043,543 on August 15, 2001. The attached Exhibit provides evidence that an engineering firm was contracted to complete production design of my invention prior to August 15, 2001.

From the time of our conception, we and employees and consultants working at our direction, diligently pursued reduction to practice of the invention through the filing date of the provisional application on May 6, 2002.

Exhibit A is an agreement signed with MindTribe with an effective date prior to August 15, 2001 (redacted) though formally signed at a later time. The purpose of this initial agreement was to implement the specification related to the claimed invention.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

A handwritten signature in cursive script, appearing to read "Charles Reynolds". The signature is written in dark ink and is positioned above the printed name.

Charles Reynolds

37 C.F.R. 1.131 Declaration Attachment  
A/N 10/625,837

MindTribe Product Engineering, Inc.

## PROFESSIONAL SERVICES AGREEMENT

It is agreed as of \_\_\_\_\_ (the "Effective Date"), by and between MindTribe Product Engineering, Inc., ("MindTribe"), located at 943 Emerson St, Palo Alto, CA 94301 and Cyber Switching, Inc., (the "Client"), located at 1800 De La Cruz Boulevard, Santa Clara, CA 95050, that MindTribe will provide professional services in accordance with the terms and provisions hereinafter provided.

### 1. SCOPE OF SERVICE

MindTribe shall work on a job-by-job basis. Each job or series of jobs consisting of product development services shall be undertaken by MindTribe as described in a corresponding proposal, as modified, each of which shall be incorporated as part of this Professional Services Agreement and marked collectively as Exhibit A (the "Services").

### 2. TERM OF AGREEMENT

This Agreement shall commence on the Effective Date and shall continue in effect until the completion of the Services, unless earlier terminated in accordance with its provisions.

### 3. PAYMENT FOR SERVICES

In consideration of the Services to be performed by MindTribe, the Client shall pay MindTribe in accordance with the terms presented in the Services.

### 4. PAYMENT FOR EXPENSES

Client shall reimburse MindTribe for all project related expenses as outlined in the Services.

### 5. TAXES

Client shall reimburse MindTribe for all sales or use taxes however designed or levied, paid or payable by MindTribe to Federal, State or Local taxing authorities based upon Services provided by MindTribe under this Agreement.

### 6. INVOICES

MindTribe will submit invoices to Client as outlined in the Services. In the event of a dispute as to a given invoice, expense or other matter, the parties agree to work toward a resolution in good faith. Payment will be made within a reasonable time following such resolution. Late payments will be charged interest at a rate of 1.5% per month from date of invoice submission.

## **7. RIGHTS AND TITLE**

MindTribe and the Client intend this to be a contract for services and each considers the products and results of the services to be rendered by MindTribe hereunder to be a work made for hire. To the extent any inventions, technologies, reports, memoranda, studies, writings, articles, plans, designs, specifications, exhibits, software code, or other materials prepared by MindTribe in the performance of services under this Agreement include material subject to copyright protection, such materials have been specially commissioned by the Client and they shall be deemed "work for hire" as such term is defined under any applicable intellectual property law, including U.S. copyright law. All rights, title, and interest in software and other materials prepared under this Agreement will be owned by the Client.

To the extent any such materials *do not* qualify as "work for hire" under applicable law, and to the extent they include material subject to copyright, patent, trade secret, or other proprietary rights protection, MindTribe hereby irrevocably and exclusively assigns to the Client, its successors, and assigns, all right, title, and interest in and to all such materials. To the extent any of MindTribe rights in the same, including without limitation any moral rights, are not subject to assignment hereunder, MindTribe hereby irrevocably and unconditionally waives all enforcement of such rights.

All documents, magnetically or optically encoded media, and other tangible materials created by MindTribe as part of its services under this Agreement that do not qualify as "work for hire," shall be owned by the Client. If any work prepared hereunder is that to which the provisions of 17 U.S.C. 106A apply, MindTribe hereby appoints the Client to assert on MindTribe's behalf the MindTribe moral rights or any equivalent rights regarding the form or extent of any alteration to the work (including, without limitation, removal or destruction) or the making of any derivative works based on the work, including, without limitation, photographs, drawings or other visual reproductions or the work, in any medium. Any assertion of such rights shall be at the Client's sole election. MindTribe agrees to execute all papers and to perform such other proper acts as the Client may deem necessary to secure for the Client or its designee the rights herein assigned.

## **8. CONFIDENTIAL INFORMATION**

MindTribe recognizes and acknowledges that Client possesses certain confidential information that constitutes a valuable, special, and unique asset. As used herein, the term "confidential information" includes all information and materials belonging to, used by, or in the possession of Client relating to its products, processes, services, technology, inventions, patents, ideas, contracts, financial information, developments, business strategies, pricing, current and

prospective customers, marketing plans, and trade secrets of every kind and character. Where the law requires, "confidential information" shall not include (a) information that was already within the public domain at the time the information is acquired by MindTribe, or (b) information that subsequently becomes public through no act or omission of MindTribe. MindTribe agrees that all of the confidential information is and shall continue to be the exclusive property of the Client, whether or not prepared in whole or in part by MindTribe and whether or not disclosed to or entrusted to MindTribe's custody. MindTribe will not use any such Confidential Information for any purpose and will not disclose it to anyone without prior approval from Client, except as is necessary to fulfill its obligations or perform Services as provided in this Agreement, in which case a non-disclosure agreement will be signed by relevant parties. In addition to the foregoing, MindTribe agrees to take such further steps as Client may direct to ensure the protection of the Confidential Information.

#### **9. TERMINATION**

Either party, Client or MindTribe, may cancel all or any part of this Agreement, without liability, if terms of this Agreement are breached. However, the terms contained in Clause 7 and Clause 8, above, shall survive any termination of the Professional Services Agreement.

#### **10. APPLICABLE LAW**

This Agreement is deemed to be made under and shall be construed according to the laws of the State of California.

#### **11. MISCELLANEOUS**

**11.1 Notices.** All notices, requests and demands given to or made upon the parties shall be in writing and shall be mailed properly addressed, postage prepaid, registered or certified, or personally delivered to either party. Such notice shall be deemed received by the close of business on the date shown on the certified or registered mail receipt, or when it is actually received, whichever is sooner.

**11.2 Severability.** If any provision of the Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Agreement shall remain in full force and effect.

**11.3 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

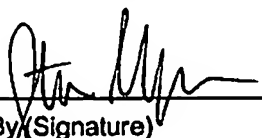
**11.4 Waiver.** No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.

**11.5 Modification of Agreement.** This Agreement and any Exhibits hereto constitute the entire Agreement between the parties concerning the subject matter hereof. It supersedes any proposal or prior agreement, oral or written, and any other communication and may only be modified in a writing signed by both parties.

**11.6 Independent Contractor.** Client agrees that MindTribe is an independent contractor for the Services to be provided to Client hereunder. MindTribe and Client agree that this Agreement is not intended to create an employer/employee principal/agent, partnership or joint venture agreement between the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their undersigned duly authorized representatives as of the Effective Date.


MindTribe Product Engineering, Inc.

  
By (Signature)

STEVE MYERS CEO  
Printed Name and Title Date

CYBER SWITCHING, INC.

Client

  
By (Signature)

Tim Reynolds Operations Director  
Printed Name and Title Date

## **EXHIBIT A: SERVICES**

Since work is performed on a job-by-job basis, please see relevant proposal for each job.